उपसभापति : अब दूसरा भी अच्छा बिल आ रहा है, राज्य सभा के हित का बिल है। Now, we take up the Representation of the People (Amendment) Bill, 2001. Shri Arun Jaitleyji.

THE REPRESENTATION OF THE PEOPLE (AMENDMENT) BILL, 2001

THE MINISTER OF LAW AND JUSTICE (SHRI ARUN JAITLEY): Madam, I move:

> "That the Bill further to amend the Representation of the People Act, 1951, be taken into consideration."

Madam, the thrust of this Bill relates to two special aspects with regard to the procedure for elections to the Members of the Council of States *i.e.* the Rajya Sabha. We have since 1951 had a firm system where to be eligible under section 3 of the Representation of the People Act, to contest for the election for the Rajya Sabha, one has to be an elector of that State; and under section 19 of the Act, in order to be an elector of the State, you have to be a person ordinarily resident in that State. Now, several features over the functioning of this election system have come to notice. In a large number of cases, political parties which send representatives from various States, have sent a person, who traditionally was not resident in that State, but for the purposes of election to the Rajya Sabha, got enrolled as elector in that particular State. If we do recollect, about six - seven years ago, there was a large controversy whether this practice now requires to be changed, as far as the legal system is concerned. We tried to develop a consensus amongst political parties. Some of the political parties took a particular view that a change, perhaps, is now required. Some people still had reservations about this. One of the points of criticism which was made against this proposal was that this may perhaps affect the spirit of federalism, which is otherwise inherent in the fact that it is only an elector of a State who gets elected from that particular State. Under the existing system or the proposed system, it is the Members of the Legislative Assembly of the State who are the electors. It is their option whom they choose to elect; who they feel can best represent the interests of the State. As against this, several arguments have been given, which I present before the hon. House, as to why this system requires now to be altered. One of the first reasons why it requires to be altered is, because in the matter of its actual implementation, a breach too frequently was witnessed. Therefore, political parties wanted to come to an honest

assessment of the situation and come to a conclusion that this, perhaps, now requires to be altered itself. The second, under our constitutional scheme, under article 19 (1)(e), a person has a right to reside anywhere in the country. So, a person who wants to change his residence -- there may be cases where people maintain more than one residence, for reasons of business -- for other reasons of family, people may be residing in more than one place simultaneously. Therefore, this, perhaps, may not be in a position to deal with such situations, the existing situation. The third reason which was also besides the factor of multiple residence is that there may be some States where even the ruling party or a ruling combination may be unrepresented completely, as far as the Lok Sabha is concerned; maybe unable to bring Members to the Upper House who are among the usual residents of that State. Therefore, in order to make sure that in the Government also there is representation of those States, there may be a compelling necessity to get some ordinary resident of that State elected from some other State. It has happened in the past; it has happened even today. There is one particular State which was completely unrepresented, otherwise, as far as NDA is concerned, both in the Lok Sabha and the Rajya Sabha. Therefore, Members got elected from other parts of the country, in order to make sure that those States also got a representation in the Council of Ministers. With these facts, the Government had introduced this Bill. There were two views even before the Standing Committee.

The second component of this Bill is with regard to the methodology of casting their votes amongst the Legislative Assemblies, as far as election to the Council of States is concerned. Currently, we have a system where parties put up candidates. But we have several cases- I have a list of cases, in the last few years-where we have certainly seen some kind of unusual practices, not very happy for a democracy, which have crept into the polling system. Cross-votings have taken place for reasons which are not entirely political. It happened in Maharashtra, it happened in some other States also where candidates put up by political parties have lost. In fact, on an earlier occasion, I do recollect, when we were discussing the Bill for proxy voting for the armed forces, some of the hon. Members of this House, Mr. Laloo Yadav and others, did mention that there is a great necessity that this procedure itself be changed immediately. And, therefore, after consulting a large number of political parties, it has been agreed on this.

The second proposal is to bring about a change in the methodology of voting and the voting, as far as the Rajya Sabha elections are concerned, be now by an open ballot. The procedure for this open ballot, I may state at the outset, is not prescribed in the primary legislation, but would be prescribed as far as rules are concerned. The Government, in accordance with those procedures, would welcome suggestions from all Members of the House today, in the course of the debate; we would also, after the Bill is passed, welcome suggestions from political parties subsequently as to what that exact procedure could be. We would also consult the Election Commission.

One procedure which has been suggested is, at least the recognised political parties, all having polling agents, and those who have been elected as Members of the Legislative Assembly on the symbol of that political party, would be compelled to show their ballot to the polling agent itself. The rest would be then a matter of parties' own discipline. Some Members have even made the suggestion whether the Tenth Schedule itself could be extended. The Tenth Schedule is a matter which deals with the Legislative Business and casting their vote outside, strictly there may not be a need to apply it at this stage. Therefore, the consensus built up was, it is not necessary to apply it at this stage.

For the present, the methodology of voting may be converted from a secret ballot into an open ballot. The procedure, I can assure this House, we will discuss with the political parties, take their suggestions, take the view of the Election Commission and only then formulate the procedure. I have given one illustration; this is not a firm view of the Government, but this is one possibility. If there are other suggestions, we will welcome those suggestions.

One point of criticism which has been made against this procedure itself has been "secrecy of ballot itself is an essential component of every election." This is the point some people have made. "And, therefore, conversion of a secret ballot into an open ballot may, perhaps, defeat the purpose of secrecy." Madam, I wish to correct this impression. Elections must be fair. In fact, in relation to the Rajya Sabha elections itself, the Supreme Court, in 1980, had an occasion to deal with a situation where a vote was shown to somebody else and the question raised was that the secrecy had been destroyed and, therefore, the election itself got nullified. I

would just read out a paragraph of what the Supreme Court had said. This is the case- I don't think the Member is present here -of Raghubeer Singh Gill *versus* Sardar Gurucharan Singh Tohra: "The secrecy of ballot was mooted to ensure free and fair elections. If the very secrecy of ballot, instead of ensuring free and fair elections strikes at the root of the principle of free and fair elections, this basic postulate of democracy would be utilised for undoing free and fair elections, which is the life and blood of Parliamentary democracy. If secrecy of ballot, instead of ensuring free and fair elections is used, as is done in this case, to defeat the very purpose of elections for the purpose for which it is enacted, to suppress the wrong coming to light to protect a fraud on the election process or even to defend a crime, that is forgery of ballot paper, this principle of secrecy will have to yield to a larger principle of free and fair elections."

Therefore, if secrecy is leading to a situation where corrupt practices have overwhelmingly crept into the system, the question for this House, therefore, in this matter would be: Will this principle of secrecy then have to yield to openness, which may, perhaps, provide some sunlight, expose those who indulge in these practices and then leave it to parties to decide what action they want to take against them? Openness, therefore, by a large number of Members has been felt. The matter went to the Standing Committee. It was chaired by hon. Shri Pranab Mukherjee. There were two views in the Standing Committee. The Committee, therefore, could not come to a firm recommendation as far as this Bill is concerned. After considering the recommendations and the various views expressed by the Standing Committee, the Government was of the firm view that it is now time, both to change the residence requirement which was a prerequisite condition, as also the methodology of voting as far as Rajya Sabha election is concerned in order to ensure that the election system becomes much cleaner. With these words, Madam, I commend to this House that this Bill be considered and passed.

The question was proposed.

SHRI PRANAB MUKHERJEE (West Bengal): I thank you Madam Deputy Chairperson for giving me this opportunity of sharing my perception on the Bill with this august House. As the hon. Minister has referred to, I had the privilege of examining the proposals in the Parliamentary Standing Committee attached to the Ministry of Home, Law and Justice. As it has

been pointed out, there were differences. We have elaborated it in the narrative part of the Report where we have indicated that Members could come to a conclusion, rather unanimity or a consensus in regard to both the important provisions of the Bill, one is the removal of residential qualification and another is in respect of openness of the voting system. What has been pointed out by the hon. Minister while introducing the Bill is that the essence of parliamentary democracy is to conduct free and fair elections and if money and muscle power enter the process of election...*(Interruptions)*...

THE DEPUTY CHAIRMAN: Just a minute....*(Interruptions)*...There is some disturbance. I think somebody has left his mike or earphone open. I think we will have to send a circular to the Members that when they leave their seats, they should switch off their mikes and earphones because it becomes very disturbing.

श्री रमा शंकर कौशिक (उत्तर प्रदेश) : कुछ और है।

THE DEPUTY CHAIRMAN: I think some earphone is open. ...*(Interruptions)*... Some translation is coming. ...*(Interruptions)*...

SHRI PRANAB MUKHERJEE: There is some technological hazard.

THE DEPUTY CHAIRMAN: Some commentary is going on. ...*(Interruptions)*...

SHRI DINESH TRIVEDI (West Bengal) : I think TV in the Central Hall is making this loud noise. ...*(Interruptions)*...

THE DEPUTY CHAIRMAN: Is it so loud? ...*(Interruptions)*... बंद करके आओ।

SHRI PRANAB MUKHERJEE: Madam, the point I was trying to drive at is that the hon. Minister has correctly pointed out that the essence of parliamentary democratic system is that money power and muscle power do not influence the elector. Unfortunately, there is no denial of the fact ...*(Interruptions)*... I am afraid we shall have to live with it for some time. I do not know where this sound is coming from. Anyway, unfortunately, in the recent...*(Interruptions)*...

THE DEPUTY CHAIRMAN: It is perhaps either the Press Gallery or somewhere else, a television is on. ...*(Interruptions)*... Mr. Mukherjee has stopped for a while, but still it is going on. ...*(Interruptions)*...

SHRI NILOTPAL BASU (West Bengal) : It is full of surprise. ...*(Interruptions)*...

SHRI PRANAB MUKHERJEE: Unfortunately, in some of the elections held recently for Rajya Sabha, an allegation was there that money exchanged. Normally, it is expected and our scheme of representation in the Rajya Sabha is very well construed. When the system of Preferential Single Transferable Voting system was introduced, it was ensured that even the smaller parties could have their representation. But it really becomes surprising when somebody comes in this House without having a single Member of his or her party in the Legislature. Then, obviously, it is not very transparent way of coming. This is one problem. Another problem which arose is this. Unfortunately, it is not for the first time. Madam, you will recollect that when our Constituent Assembly was constituted by a resolution passed by the House of Commons, the Members of the Constituent Assembly were also chosen in the same methodology through which the Members of the Rajya Sabha are elected today. It had happened that some of the very prominent personalities of the Constituent Assembly represented the States to which they, actually, did not belong. It had happened with the then important party, Muslim League, and also in respect of some of the other important personalities. Anyway, the system continued. Thereafter, it was found necessary to make an amendment. And, as I mentioned, there are two important elements in the proposed Bill. The first one is the removal of residential qualification. The idea behind having the residential qualification is, a Member representing a State - as it is called the Council of States - must represent the interests of that State. And, it was thought that if he belongs to a State - as a resident of the State concerned - the interests of that State is properly represented. And, the counter argument was this. The electorates or the Members of the State Legislative Assembly, surely, not going to choose a person who will not be mindful of the interests of the State which he represents. Therefore, the residential qualification need not be observed. And, it was found that some of the Members, including myself, represented a State to which they did not belong. This is my sixth term but in one term between 1981-87 I represented the State of Gujarat. So, naturally, I had to issue a declaration

indicating the change my residential address. There is nothing wrong in changing one's residence. But, naturally, eyebrows were raised. Some of the Members have more interesting history that in three terms they represented three different States - representing one State for one term, another State for another term and one more State in another term.

THE DEPUTY CHAIRMAN: They must be good travellers.

SHRI PRANAB MUKHERJEE: That is why I am not mentioning the names.

SHRI NILOTPAL BASU: It is both ways. They represented three different parties as well.

SHRI PRANAB MUKHERJEE: No, no. They represent the same party. So far as the instance which I am referring to...

SHRI NILOTPAL BASU: I am referring to an instance where the Member had been representing three different parties, on consecutive terms.

SHRI PRANAB MUKHERJEE: But, whether he is coming from the same State or from the other State.

SHRI NILOTPAL BASU: He is representing three different States consecutively.

SHRI PRANAB MUKHERJEE: It has happened sometime. Therefore, the political parties find it extremely difficult. If they want to bring some of their important members and if the State does not have the adequate representation, naturally, these types of practices are followed and almost every political party has accepted it. So, in the fitness of things, it was considered to recognise the ground reality and remove the legal hurdles that are there. That was the rationale behind it.

So far as this aspect of the Bill is concerned, the Standing Committee made a recommendation that there need not be a residential qualification. As the hon. Minister very correctly pointed out, we could not come to a conclusion in regard to openness of the votes. At one point of time, it was considered whether voting could take place by pressing a

button, as we do in the case of division. But, when it was pointed out that the preferential votes are to be recorded, therefore, a ballot is needed and instead of having a secret ballot, now it will be an open ballot and, surely, the Government will have to work out a mechanism, through which the system of open ballot can remove the question of having election through unfair means and by resorting to money power - whether the danger still remains. And, surely, all laws cannot plug all the loopholes. Now, here, we are talking about certain safeguards in respect of the individual Members concerned.

But if a political party - and their instances are not lacking - decides to have representations of that political party in certain other considerations, then, who is to protect it? And, it has happened. I would not mention the names. The names are obvious. It has happened that sometimes some political parties had chosen persons from outsides, or persons from the same State, but not for his political contribution, nor for his whole-hearted association with the party, but for other considerations. And, from day one it has happened. If you look at the list - at that time, I think, it was not 232, it was 233 or so - you will find that those persons who represented the different States in this Council, all of them were not political activists or social activists. A large number of them were there, but there were some other people also who could manage their nomination from the political parties, by exercising their influences. Therefore, that is going to take place. I think, unless we create adequate awareness and consciousness within the political system and political establishment, it would be very difficult to prevent that. We are extending our support to this Bill. And, I do hope that the scheme, which had been envisaged fifty years ago -- though this Bill has not evoked that much attention -- now, we are making major changes in our constitutional process. One major change would be the 'open voting system', and the other major change would be the residence qualification attached to the Members of the Council of States, in regard to the compulsions of residing in the State from which he is elected. These are the two major changes in the scheme of the constitutional mechanism, which have been operating through all these years. I do hope that objective, with which these amendments are brought in, would be fulfilled. And, if, in course of time, we find any other difficulty, of course, it would be for this House to make the necessary amendments. With these few words, I support this Bill.

SHRI B.P. SINGHAL (Uttar Pradesh): Thank you, Madam Chairperson, for allowing me to share my views on this very important amendment Bill, which is coming out of 52 years of its practice. As hon. Minister, Shri Arun Jaitley, has made all the points, the support to the Bill is not very much left to be said. But, I was very, should I say, amused at the revelation made by hon. Pranabda that this had happened right in the Constituent Assembly. Now, if this had happened at that time, I think, this amendment Bill, which is coming today, should have come right in the beginning.

[The Vice-Chairman (Shri Ramashanker Kaushik) in the Chair]

SHRI B.P. SINGHAL : So, as has been said, the Bill aims to make major changes in sections 3 and 59. The remaining two sections 94 and 128 are merely consequential. Now, while the local residents have been made redundant in the new amendment, the fact remains that there were States where even major political parties were not represented at all. And, every political party, naturally, has its view to talk about the problems of the States even where they do not have any representation, or, they have scarce representation. In such States, how is that political party going to voice its concern? And, therefore, this subterfuge was used to get them elected from somewhere giving them representation here, but he essentially belonged to the State which was going unrepresented till then, so far as that party was concerned. Then came the question of outstanding talent, which, sometimes, was necessary for being incorporated in the running of the Government; and, why should not the country use the best of talent in running a Government? For that reason, this subterfuge was again utilized.

The third reason is, perhaps, just typical to Delhi, where the major and important politicians have made their residences now for years, but there have been only seven limited Lok Sabha seats and just two Rajya Sabha seats, all can't be accommodated from Delhi State itself. So, they had to be brought in from various other States, utilizing the same subterfuge. Now, this was being done so openly.

And the last point was that the Election Commission itself confessed in April, 2001, that there is no definition of 'ordinarily resident'. Now, with that definition not being there, it became very difficult for the Election Commission to take any action against this subterfuge. As this was

going on, and as Shri Pranab Mukherjee said, considering the ground reality, this change was brought in, and it is just as well that this has been brought in, because very eminent, respectable persons had to, more or less, declare a lie on an affidavit, which is supposed to be filed at the time of elections that I am a resident of this place, knowing jolly well that they are not residents of that place. So, this amendment will do away with this compulsion that was compelling eminent persons to state what was not altogether correct. Now, on the other hand, the second problem started springing up and that was the problem caused by the slackening of discipline in political parties. Now, they were told to vote for someone and they just decided not to vote, because it used to be a secret ballot. This cross voting took place, perhaps, for personal consideration of cases, but when this cross voting started for considerations, which were directly related to money power, then, it began cutting at the roots of democracy itself, and it is just as well that this second amendment also has been brought in to remove the play of money in the election to the Council of States.

There are any number of instances, the hon. Law Minister, perhaps, has got a whole list of such cases where money power has obviously been used and people have not voted on the party lines. And it is just as well, Sir, the rules are yet to be formulated and how these are going to be implemented will be made with the consensus of all the parties. However, there is no doubt about the desirability of these two amendments. With these words, Sir, I commend that the amendments be passed.

SHRI NILOTPAL BASU : Mr. Vice-Chairman, Sir, at the outset, I would like to make it abundantly clear that our Party had opposed the provisions of this Amendment right at the stage of introduction, and we continue to oppose the provisions of this Bill. We do not think that our opposition is based on any ideal which is not in tune with the times. Rather, we feel that the amendments which have been proposed by the hon. Law Minister are, actually, based on totally misplaced presumptions. At the outset, I would like to try --I do not know whether I can actually to remove certain factual misconceptions. The hon. Law Minister, while moving the Bill, said that a large number of people who were not ordinarily the residents of a State were, actually, giving false information to get themselves enrolled in the voters' list of that particular State. We have been given a very good and factual Report by the Standing Committee. Though I do not agree with many of the conclusions, I cannot really adversely comment on the quality

of the Report. The Report, as such, is very good. The Committee while finalising its recommendations had asked for the number of such Members who were not ordinarily resident, but had actually given sort of false certificates. On page 1, in para 2.4.1, which is related to this subject, it has been stated, and I quote" "The Legislative Department submitted to the Committee a list of 20 Members, out of 232 Members elected in six biennial elections, held during the period from 1.1.88 to 28.12.93, as collected from the Election Commission of India." Of course, it is also qualified by saying, "which appears to be illustrative and not exhaustive as complete information as sought by the Committee is not available with the Election Commission of India."

My point is that if we go into the actual cases, that is, the total number of such Members who are not ordinarily resident of a State, but, have, actually, given some kind of a certificate to the contrary, you will find that it would be around 10 per cent of the total Members elected in the State. Now, this Bill is going to decide the fate of this House which is otherwise, called the Council of States. At a given point in time, the Council of States captures the complex, the heterogeneous, the diverse political reality of the State, unlike the House of the People. The actual political reality, the actual culture, that is obtaining in the States is expressed in the collectivity of the composition of the Council of States. That was the idea which was built up in the Constitution. For paucity of time, I do not want to go extensively into the debates of the Constituent Assembly as to why the Council of States was needed when there was the House of the People. When people directly elected their representatives, what was the need for having the Council of States? It was, precisely, to have an expression of the realities that obtained in the States that the Council of States was needed. The question that, therefore, arises is, to be elected to the Council of States from a particular State, how do they actually qualify to represent those States in the Council of States? What is the necessary requirement? Now, hereafter, how will you address this question that a particular Member being elected from a State is in a position to adequately represent the concerns of the State? What will be the distinguishing feature? Till now, there was a distinguishing feature. Some aberrations were there. But, hereafter, how will a particular Member claim, or, appropriately address and articulate the concerns of the State? That answer is not there in the amendment. Why I am saying this is because, if I am not an ordinarily resident, I will not be aware of the problems of the

State, I will not be aware of the concerns of the State. How can I articulate the concerns of the State, which is one of the fundamental qualifications for me to be a Member of the Council of States? This is a fundamental question which has to be answered.

Now, the other issue of concern is this. It has been said that some hon. Members who can contribute to the political process cannot get elected. Sir, these are exceptions which people also have come to accept. We need not get troubled over that. People know that a candidate may not be actually representing the reality on the ground, but, at the same time, they know that for nation building, for requirements of governance, those people need to be accommodated. So, those things remain. But, now, what will happen? Once that bar is removed, it will open the floodgates. My fear is that people who are not ordinarily resident of a particular State will come in the majority representing those States. Is there any remedy for that in this Bill? You will debar people who are ordinarily resident of a particular State, they become minority in so far as representing their State in the Council of States is concerned. There is no doubt about that. Otherwise, how do you stop instances like the one that Pranabda was citing and the one that I was citing? I will also not mention the name. But I know of a Member representing three different States, and representing three different parties, in consecutive terms. How do you stop that?

Then, you come to the core of the problem of our democratic system today. The problem is not in the form; it is in the content; it is in the substance. What is the definition of a 'political party'? A political party is a voluntary organisation of individuals who have voluntarily joined a political party on the basis of a certain ideology, on the basis of a programme, on the basis of a set of policy issues. Now, in a democratic polity, if you have a situation where individuals who have voluntarily joined a political party are no longer attracted by the ideology, programme and the set of policies of that party and in exercising their choice on the basis of extraneous considerations like money, can that basic malady of the political system be remedied by legitimising that wrong practice? It cannot be. I think, we should introspect, we should ponder over this. In any textbook of democracy, anywhere in the world, universal adult franchise and secret ballot are the two essential ingredients of democracy. Why? It is because as opposed to dissent or dissidence, difference of opinion is an essential ingredient of democracy. Therefore, an open ballot, which is to stifle the

difference of opinion, is something which is antithetical to democracy. Therefore, we are actually striking at the very root of a very significant feature of the democracy for the sake of our own convenience (time-bell). सर, दो-तीन मिनट और दे दीजिए। विरोध में बोलने वाले सदस्य ज्यादा नहीं हैं, इसलिए बिल तो पास होगा ही। So, I am saying how to do that because this amendment has this great pretension of upholding very lofty ideals, that we are going to stop the influence of cash power in politics; we are going to stop horse-trading. But you will go to wholesale horse-trading from retail horse-trading. Instead of buying individual Members from a party for voting, you switch over from retail horse-trade to wholesale horse-trade. You buy smaller parties -- four member or five member parties -- and you get elected. So the pretension on which this Bill is premised is totally misplaced due to such things. We have political parties who go with manifesto, who go with certain programmes, and who go with particular commitment that after getting elected we will never ally with that particular party to come to power. The very next day, that very same party allies with that very party with whom it was never to ally. The confidence that the people, the electors bestowed on that party is being betrayed. Now when a party or Government legitimises such practices and claims that 'by having this practice we are going to completely cleanse the system from the influence of cash or other opportunism', I think, it is a bit too much for me to digest. जैसे हाज़मोला ऐडवरटाइज़मेंट में दिखाया जाता है कि कोई बच्चा अपने सपने में बॉलिंग कर रहा है तो वह बोलता है कि ऐसे आउट कर देंगे। कपिल देव तब जाता है और वह बोलता है कि यह बात हज़म नहीं हुई। यह वैसे ही है कि दूसरी पार्टियों के साथ वे एलाइड कभी नहीं करेंगे, यह वादा करके लोगों से वोट लेकर, फिर वे एलाइड करते हैं। इसलिए हमारे देश में ऐसी पार्टियां हैं जो यह काम कर सकती हैं कि पैसे लेकर जिनको नहीं लेना चाहिए, ऐसे लोगों को भी ले सकती हैं। Therefore, we should, as political parties, seriously introspect as to how the principles on which political parties function can be rectified; as to how we can recapture certain healthy practices in politics. Now we are knocking at the wrong doors to really address our own problems. The problem of indiscipline and the problem of dissidents can never be stopped in this manner unless we improve our system of internal democracy, unless we have healthy practices of free and fair discussion in the parties. And unless we use democratic practices to evolve candidatures, you can never stop this. This will continue, and this will continue to ail the political system. Therefore, Sir, with all humility, I would say that the reasons that are being cited are very wrong, and there is no answer as to how a Member will establish his or her credentials to effectively and appropriately articulate the concerns of a State and as to what will be the

distinguishing qualities that a Member will be having in the post-amendment regime, that answer is also not there. Therefore, I cannot accept this. Today another important feature is emerging in Indian politics, that is, we have a large number of regional parties coming up. Federalism is a big question in our country today. Therefore, we have to strengthen the process whereby there is cooperative federalism. Without substituting them with an even more improved manner in which a person is better and more appropriately representing a State, if we abolish whatever distinguishing features are there, that will be a very major setback to the process of federalism that is developing in this country. Therefore, looking at the current requirements of the political process and current difficulties that the political system is facing, I think that this Bill is not going to help us in our problems in politics overall, or in better constitution of the Council of States, which is a very, very important institution, as has been envisaged by our Constitution-makers. Therefore, we oppose this Bill with whatever strength we have.

SHRI KAPIL SIBAL (Bihar) : Thank you, Mr. Vice Chairman Sir, for giving me this opportunity to place my thoughts on this proposed legislation. There are two separate issues, which are incorporated in this amendment; one relates to change of residential qualification, and the other relates to the manner of voting for representation to the Council of States. So, I will take up each of them separately. I have to say that I have listened with rapt attention to what my good friend, Shri Nilotpal Basu, had to say on the proposed amendments, and I would like to place my thoughts on it. First of all, regarding the residential qualifications, I do believe, Sir, that there was essentially a lacuna in the original legislation dealing with this. If you look at the definition of the term "ordinarily resident", that definition did not come about in the 1951 Act; the term "ordinarily resident" was used in the 1950 Act. It deals with, not the process of election, but with the preparation of electoral rolls. What used to happen was that -- and this is the anomaly -- without anybody knowing, a person who wanted to become elected from a particular State, used to quietly go himself and enroll in that particular State, much before the election. Under the rules, you have to be "ordinarily resident" at least for six months. So, he used to enroll prior to six months. Now, at the time of enrollment of a particular person in the electoral roll, nobody comes to know. There may be some notice, but other political parties don't even have any idea as to whether a particular person is going to take part in elections six months down the road. So, once the name is

4.00 p.m.

entered in the electoral roll, as far as the test of the "ordinarily resident" is concerned, that is complete, that is final. What happens thereafter is the election. At the time of the election, a person has to file his nomination paper, and then, he has to file a copy of the electoral roll. The copy of electoral roll is proof of the residence. So, at the time when the nomination paper is scrutinized, under Section 39 of the Representation of the People Act, 1951, nobody can say, at that time, that you are not "ordinarily resident" in this State. That cannot be the subject-matter of challenge because, as far as the Returning Officer is concerned, he looks at a person's electoral roll, he is given a particular number, and his name is entered. That enquiry cannot be gone into at that stage. So, automatically, the election takes place. Now, once the election takes place, as you know, the grounds of challenge to that election are set out again in the Representation of the People Act and the grounds of challenge, which are set out in Section 8 and 8(A) of the Representation of the People Act, as well as under the Constitution, do not allow, as a ground, the issue of residence. In other words, a person who files an election petition cannot challenge the election of a candidate on the ground that he was not ordinarily resident in that State from which he got elected. That is not a ground. So, the result was that there was no adequate machinery under the Representation of the People Act to challenge the issue of residence, once a person got elected. Therefore, people used to go to those States, much in advance, get their names entered in the electoral rolls and get themselves elected knowing full well that the issue cannot be challenged in a court of law. So, the remedy for Mr. Basu is not to oppose this, but to say that you should have another law, by which the issue of ordinarily resident can be questioned under the Representation of the People Act. That is not what he is suggesting. If my good friend is really genuine and really concerned about this issue, when 51 years have passed, his party should have brought forward an amendment under the Representation of the People Act and proposed that that challenge should be made available to an election petitioner, challenging somebody's election on the ground of residence.

Now, Sir, if you remember--it takes me back to a few years--there was a Chief Election Commissioner who got very concerned about all this.

He started writing letters to various people in various States as also candidates saying, "Please let me know how you are ordinarily resident". The Chief Election Commissioner thought that it was his jurisdiction to find out whether a candidate was ordinarily resident or not, knowing full well that in a court of law it was not permissible. So, my good friend's intentions are correct. His concerns are correct. But he is approaching it in a wrong way. What is the hon. Minister trying to do? He knows that it is very difficult to challenge this. He knows that it is virtually impossible. If it is impossible to challenge the issue of ordinarily resident, once you get elected, why is the hypocrisy? That is one part of it.

The other part of it is, again, my friend, Shri Nilotpal Basu talked about federalism. He is right. I think we should all be concerned that this amendment should not lead to a situation where, from a particular State--because the major political parties have representation in the House--there is no representation. That is something which will go against that political party, if we don't have candidates from that State. That will be the biggest political issue against that political party saying that you seek to represent that State by persons who do not belong to that State. That will be a matter of campaign against that political party which will be far more harmful to that political party. So, the process of democracy is such that if any political party tries to disturb the federal structure or tries to disturb the representations from various States by giving *en masse* tickets to those who do not belong to that State, I am afraid, the opposition to that political party will be such that it will be wiped out in that State. No political party will dare to do such a thing. That is a practical answer to the concern expressed by my good friend. ...*(Interruptions)*...

SHRI SATISH PRADHAN (Maharashtra) : Shri Ghulam Nabi Azad represented Maharashtra.

SHRI KAPIL SIBAL: I don't want to take names. In this House, we are discussing a matter of vital importance. ...*(Interruptions)*...

SHRI PRANAB MUKHERJEE: He was representing Maharashtra in the Lok Sabha.

SHRI KAPIL SIBAL: Let us not go into the examples. All of us and all political parties must be guilty to the fact that many persons

represent States in which they, in public perception, are not ordinarily resident. We may plead guilty to that. ...*(Interruptions)*...

SHRI C.P. THIRUNAVUKKARASU (Pondicherry) : The DMK doesn't do that.

SHRI KAPIL SIBAL: The DMK, perhaps, is one of those parties which has never committed a wrong. So, maybe, you claim yourself to be that. I don't think the world is going to believe you. But, anyway, that is another matter. This is really an issue of ordinarily resident.

SHRI B.P. SINGHAL: This problem does not arise for a party which is there only in one State. This problem arises when a party is there in several States.

SHRI KAPIL SIBAL: It also does not arise in a State where, though that party is there only in one State, it is fast fading away. Sir, now, let me come to the issue of open voting, which is very important issue. My good friend Mr. Basu's objection to it is that it goes against the very concept of secrecy, which is at the heart of democracy. It is antithetical to democracy. That is his objection. But, Sir, if we look at it, what is the secret voting; what is secret ballot? The procedure to vote in secrecy is not the essence of a secret ballot. That only represents a procedure. The essence of secret ballot is that you should vote according to your conscience. That is the essence of secret ballot. In other words, you must vote for a person who you consider to be the best. The manner you vote is secrecy because you do not want to reveal, whom you consider in your heart to be the best choice for that particular seat.

Now, if I, by taking money or through other means, employ the method of the secret ballot, can it ever be said that this protects secrecy, as it does not emanate from your conscience. I am voting because somebody has given me money to vote for a particular person and has nothing to do with my conscience. So, if a person is voting with those considerations in mind, in fact, that vote is antithetical to democracy much more than the procedure now to be adopted. Today what is the hon. Minister trying to do? What is this piece of legislation trying to do? He said, instead of retail horse-trading, there would be wholesale trading, but if it is wholesale horse-trading, let it be out in the open. Let the entire world

know that you are indulging in wholesale horse-trading because it will be open ballot. I would any day prefer wholesale horse-trading in the open than retail horse-trading in secret.

Let me state another thing. What do you mean by open ballot? I would like the hon. Minister to clarify in his response. Does open ballot mean that the whole world gets to know whom you vote for? Does open ballot mean that only your political party, for whom the person has exercised his right to vote, gets to know, whom the person votes for? So, we will have to define what an "open ballot" is and my suggestion to the hon. Minister is the following: The essence of open ballot here is that your party which has put up a candidate and expects a certain number of seats, because your party representation in the Assembly must ensure that those who represent you, vote for you. That is really the essence. So, the open ballot is for your party to know about it and your party should not be left in the lurch by somebody using secrecy of voting and selling his vote to somebody else. That is all. If that be the case, then, all you need to do in the open ballot is that when a person goes to vote, there can be a counter-signature of either the polling agent or the candidate and there should be two same ballots, one filed for the vote and one given to the candidate so that he knows the person who voted for and both must be authorised by the Commission, so that it is open to that political party. I hope I have made myself understood. You could have two ballots for the vote, one filed with the Returning Officer, one given to the polling agent, appointed by the political party so that the polling agent and that political party knows exactly how your particular elector has voted. So that will be open to that political party and that ballot will not be available for scrutiny by another political party. So, that will protect you from secrecy quay others but make it open for your political party. Sir, it is only a suggestion for consideration. You will have to evolve methodologies. If you allow it by an open voting, what will happen is, people will challenge it and say, "He never voted". Then it will be a matter of evidence in a court of law and it will lead to a disaster. We must have rules. We must have foolproof rules. We must define as to what is the meaning of 'open voting' and that open voting should be limited to the party concerned. That is my suggestion. Subject to these things, I commend this Bill to the House and hope that all of us will pass it. Thank you.

SHRI N. JOTHI (Tamil Nadu): Sir, this Bill is a clear admission of

inability on the part of the Government in controlling party discipline, in one way. This Bill contains two aspects. One, in regard to residential qualification and the second in regard to the manner of voting. So far as residential qualification is concerned, falsity has been openly admitted and incorporated in the Statement of Objects and Reasons. I am very sad to say this. The Statement of Objects and Reasons says, "A precise definition of 'ordinarily resident' was very difficult and emphasised that it was for the political parties, acting through Parliament, to carry out what is their judgement". It is wrong to say so because Section 20 of the Representation of the People Act, 1950 very clearly illustrates in its 8 clauses the meaning of 'ordinarily resident'. How can the Statement of Objects and Reasons say that a precise definition of 'ordinarily resident' was very difficult? If you want to define it further, you elaborate it in the sub-clauses. Please do not take a shelter under a statement that the Election Commission has said that it is very difficult to give a precise definition of 'ordinarily resident'. It is a wrong statement. The Statement of Objects and Reasons is giving a wrong statement. Section 20, which contains 8 clauses, clearly gives a key to find out the meaning of 'ordinarily resident'. It can be easily understood who is 'ordinarily resident' in a particular area. The Statement of Objects and Reasons has given an incorrect version which is not akin to what Section 20 says. This aspect needs to be clarified further. If it is done, instead of calling it the Council of States, it can very well be called the Council of India. It is very unfair because our forefathers very clearly illustrated in the Constituent Assembly debate - it is there in the Emergence of the Second Chamber of India - the need for the Council of States. There is no point in bringing an outsider to the State and get him elected for convenient political adjustments because, otherwise, he would start a new party. Only to please him this kind of an activity is sought to be done. They will say, "You are a regional party. It is very convenient for you to administer discipline. But we are already a national party. We are unable to administer discipline in our party." We have already witnessed one such indiscipline in one part of the country. It is very much on the card now. It is wrong on the part of the Government to come forward with a Bill to say that there is no precise definition available for 'ordinarily resident'.

So far as clause 2 of this Bill is concerned, I oppose this clause. Outsiders can never be the representatives of the State. If for the words "in that State or territory", the words "in India' are substituted, the meaning of the Council of States will be lost once and for all. It will become a routine

affair. To safeguard the serenity of this House, I appeal to the Minister to reconsider this particular aspect. It should again be discussed with all the political parties. There is no urgency for this amendment. All the political parties will give their views.

So far as open ballot is concerned, as I said earlier, there is a clear admission of inability to administer party discipline. We have seen rich people becoming members of a club and in the same way they have become Members of this august House also. This is very unfortunate. We know how they have become Members. It is an open secret. And, this should be discouraged. But it cannot be discouraged by merely an amendment in the Bill. We should give teeth to it in the Tenth Schedule so as to disqualify those people who go against the party whip and vote for money, vote for other considerations. The party discipline is as important as family discipline. There cannot be any party without a discipline. If the discipline is lost, then, everything is lost. So, by merely bringing in clause 4, namely, voting by an open ballot, the purpose will not be achieved. The purpose can be achieved only if we bring in a deterrent provision, namely, punish the erring persons. So, I appeal to the Law Minister to think on this issue. I feel that the Bill needs more consideration, and more provisions should be added. It looks like a truncated Bill.

As far as 'residence qualification' is concerned, considering view of our forefathers, I strongly feel that a second thought should be given. Now, you have given illustrations to show how several people got elected on various occasions. It is happening out of compulsions. You continue it. But don't legalise it. Don't legalise the mistake. Don't legalise the burglary. It will lead to chaos. Sir, it is happening, and it is being managed also somehow or the other. Let it continue. But don't make the Council of States a totally different entity. This is what I would like to submit.

SHRI B.S. GNANADESIKAN (Tamil Nadu) : Are you supporting it or opposing it?

SHRI N. JOTHI (Tamil Nadu) : Sir, I would like to answer him. I oppose clause 2 of the Bill, and I want that it should be deleted. As far as clause 3 is concerned, I strongly feel that it is necessary. Of course, clauses 4 and 5 are consequential to clause 3.

SHRI C.P. THIRUNAVUKKARASU : Sir, there are two things in this Bill. One is 'residence qualification' and the other is 'open voting'. As far as residence qualification is concerned, the law prescribes certain norms. Even if you want to get admission in a college, being a resident of that particular place is necessary. This residence qualification is very important right from life till death. If that be the case, why should we not insist 'residence qualification' for Members of Parliament? Moreover, the Schedule prescribes the number of Legislatures or Members of Parliament from each State. Supposing, a person hailing from Karnataka is allowed to contest from Pondicherry and he is elected, he will always be recognised as a resident of Karnataka and not as a resident of Pondicherry. Moreover, the one seat which is allotted to Pondicherry will also be robbed by the person from the other States, say, from Karnataka, Andhra Pradesh and so on. Furthermore, I want to submit that as far as access to the people is concerned, as a man from Pondicherry, I am always available and easily accessible to the people, and I always look into the welfare of the people of Pondicherry. This accessibility to people will be lost if this amendment is brought in. Also, you would be imposing an outsider, as a Member of Parliament much against the desire of the people of a particular State. In fact, this difficulty would be faced by the ruling party itself, when there will be pressures from people everywhere that they should be considered for election to Rajya Sabha when there are vacancies in other States as well. So, in order to remove this difficulty, it is better not to have this amendment. All right, now you have brought this amendment Bill; it may be a part of your NDA manifesto. I suggest that you should try it for about two years. I think you will face difficulties in defining who is ordinarily resident, whether it is the ruling party or the other parties.

I now come to the second aspect with regard to open ballot. I am also one of the victims of that. Three votes were robbed because of the secrecy of voting. Somehow or the other, I won the election.

DR. V. MAITREYAN (Tamil Nadu) : With the help of our party.

SHRI C.P. THIRUNAVUKKARASU : Fortunately, the AIADMK helped the DMK people in winning the elections.

SHRI N. JOTHI: We have gracefully allowed him, but he is not thankful to us.

SHRI C.P. THIRUNAVUKKARASU: That was the first election in which by abstaining from voting, they helped me. So, I won the election.

Then, I would like to know whether the anti-defection law is applicable in this process or not, because the right of giving a direction is there under the anti-defection law. What happens if you vote or abstain from voting contrary to any direction issued by the political party to which you belong or by a person or an authority authorised by it? Suppose, a direction has been given by a party that you should vote for a particular person; if you do not vote, the question arises whether the anti-defection law is applicable or not, and whether the person will or will not be debarred. This particular aspect has not been clearly mentioned in the Bill. So, I request the hon. Law Minister to clarify whether the anti-defection law is applicable or not. For example, I want to vote for another person; I may go openly to the legislature and raise my hand in favour of another person, not supported by the whip or the ruling party. In such cases, I want to know whether a whip can be issued or not, or whether it can be taken into consideration or not. If a whip is issued, I respectfully submit, Sir, then you are curtailing certain rights. Anyhow, we can have it as a test case and see how it works. With these words, I support the Bill, for the time being. As Shri Pranab Mukherjee has mentioned, we may try it for two years and after that if the Government feels the necessity, we may amend it.

प्रो. राम देव भंडारी (बिहार) : माननीय उपसभाध्यक्ष महोदय, माननीय मंत्री जी जब इस बिल को प्रस्तुत कर रहे थे तो इन्होने मेरे दल के नेता श्री लालू प्रसाद जी की चर्चा की थी और उनके समर्थन की भी चर्चा की थी। मैं भी अपनी पार्टी राष्ट्रीय जनता दल की ओर से इस बिल का समर्थन करता हूं मगर मैं मंत्री जी को स्मरण कराना चाहता हूं कि इन्होने एक बात और कही थी कि जिस प्रकार राज्य सभा के चुनाव में खुले मतदान की पद्धति की व्यवस्था की जा रही है उसी प्रकार विधान परिषद् के चुनाव में भी खुले मतदान की पद्धति की व्यवस्था होनी चाहिए।

महोदय, हम फ्री एंड फेयर पोल के लिए गुप्त मतदान की व्यवस्था और वकालत करते रहे हैं मगर ऐसी स्थिति भी आ गई है कि अब हम गुप्त मतदान के बदले में खुले मतदान की पद्धति की बात कर रहे हैं। इसके पीछे जो पोलिटिकल सिस्टम है, वह कहीं न कहीं जाकर असफल हो गया है। इसलिए इस प्रकार की व्यवस्था करने की आवश्यकता पड़ गई है । कई माननीय सदस्यो ने चर्चा की है कि चुनाव में मनी पावर का, मसल पावर का वर्चस्व बढ़ गया है । मनी पावर का इस्तेमाल करके न सिर्फ राज्य सभा बल्कि लोक सभा, विधान सभा, विधान परिषद् और इस पोलिटिकल सिस्टम में जो चुनाव होते हैं, उसमें पैसे का इस्तेमाल करके उन्हें सफलता मिलती है और वे ऊंचे पदो पर पहुंच जाते हैं । आज स्थिति ऐसी बन गई है कि जो कमजोर पैसे वाले, ईमानदार कार्यकर्ता और नेता हैं वे पैसे की वजह से चुनाव नही जीत पाते हैं । वे

चुनाव से भाग रहे हैं । वे ईमानदार हैं, समाज मे उनकी प्रतिष्ठा है, राजनीति मे उनकी ईमानदारी है लेकिन पैसे का जो खेल चल रहा है, मनी पावर का जो खेल चल रहा है उसकी वजह से वे चुनाव से, पोलिटिकल सिस्टम से भाग रहे हैं । सभी पार्टियां इसकी भुक्तभोगी हैं । लगता है कि इधर कुछ वर्षो से भारतीय जनता पार्टी को इस प्रकार का खामियाजा भुगतना पड़ रहा है इसीलिए वे इस तरह का बिल लाए हैं । यह खेल तो कई वर्षो से चल रहा है । जो पोलिटिकल पार्टीज हैं, जिनके पास अपने उम्मीदवार को जिताने के लिए सफिशिएंट मैम्बर होते हैं, वह चुनाव हार जाता है और एक निर्दलीय उम्मीदवार अपने पैसे की बदौलत करोड़ो रुपए खर्च करके चुनाव जीत जाता है । सभी पोलिटिकल पार्टियो को कहीं न कहीं यह खामियाजा भुगतना पड़ा है । इसलिए महोदय, इस बिल की आवश्यकता थी । इस बिल के आने से अब खुले मतदान की व्यवस्था होगी । इसमें किसी भी पार्टी का सदस्य अपनी पार्टी को धोखा नही दे पाएगा । एक-एक वोटर दो-दो, तीन-तीन उम्मीदवारो से संपर्क करता है । सबको आश्वासन देता है । सबसे लेन-देन की जो बात होती है, वह लेन-देन करता है लेकिन वोट किसी एक को देता है। चूंकि गुप्त मतदान होता है इसलिए इसका पता भी नही चलता है । यह सबसे यही कहता है कि मैंने आपको ही वोट दिया है । इसका पता नही चलता है । यह व्यवस्था भले ही देखने मे ऐसी व्यवस्था लगती है कि गुप्त मतदान का जो बेसिक प्रिंसीपल है वह इससे मेल नही खाता लेकिन मैं और मेरी पार्टी महसूस करती है कि पैसे और खरीद-बिक्री का जो खेल चल रहा है, वैसी स्थिति मे इस प्रकार की व्यवस्था की आवश्यकता थी । इसीलिए सदन के बाहर मेरे दल के नेता आदरणीय लालू प्रसाद जी ने इस बिल का समर्थन किया था । इस प्रकार के बिल के आ जाने से जो बड़े-बड़े पैसे वाले हैं, जिनके पास काफी ब्लैक मनी है, पैसे के अलावा उनकी राज्य सभा और लोक सभा मे जाने की जो भूख है उस भूख को मिटाने के लिए वे जिस पैसे का इस्तेमाल करते हैं, इस व्यवस्था के बाद राज्य सभा मे आने के लिए इसका इस्तेमाल नहीं कर सकेगे । अगर किसी पोलिटिकल पार्टी का वोटर अपनी पार्टी की उम्मीद के खिलाफ जाएगा तो उसके खिलाफ कार्रवाई होगी । उसे पार्टी से निकाला जाएगा । हो सकता है कि वह अपनी सदस्यता से भी वंचित हो जाए । इसलिए महोदय, मैं इस बिल का समर्थन करता हूँ और साथ ही आपको पुनः स्मरण कराना चाहता हूं कि आदरणीय लालू जी ने आपसे अनुरोध किया है कि विधान परिषद् के चुनाव मे भी इस प्रकार की व्यवस्था होनी चाहिए जिससे वहां भी पैसे का खुला खेल न हो, वोटरों की खरीद-बिक्री न हो । इन्ही शब्दो के साथ मैं इस बिल का समर्थन करता हूँ ।

श्री सतीश प्रधान : उपसभाध्यक्ष महोदय, मैं इस बिल का समर्थन करने के लिए खड़ा हुआ हूँ और मैं आपके माध्यम से तीन मुद्दे सरकार के सामने रखना चाहता हूं । सब से पहली बात तो यह है कि आगे के लिए सरकार ने ओपन वोटिंग का जो तरीका अपनाने का निर्णय लिया है उसका मैं पूरा समर्थन करता हूं । कारण यह है कि गई राज्य सभा का हमारे महाराष्ट्र मे जो चुनाव हुआ था, उस समय मेरे साथ उपसभापति महोदया भी थी, और उस समय पैसे का जो खेल हुआ वैसा खेल हिन्दुस्तान मे कभी नही हुआ था । उस समय एक-एक वोट का 40-40 लाख रुपये का सौदा किया गया था । इसके बाद सब जगह पर पूरे जोर से यह बात उठी कि किसी भी हालत मे इसके कानून मे कुछ न कुछ प्रावधान करने की आवश्यकता है, बदलने की आवश्यकता है और भविष्य मे ऐसा कभी नही हो इसका बंदोबस्त होना चाहिए । मेरा ख्याल था कि इसके तुरंत बाद यह बिल आ जाएगा, लेकिन नही आ सका, फिर भी आज आया है तो अच्छी

बात है, क्योकि महाराष्ट्र मे दूसरा चुनाव अगले साल होने वाला है और उससे पहले यह बिल आ गया । उसके लिए मैं धन्यवाद देता हूँ । साथ-साथ मैं यह भी बताना चाहूंगा जैसा अभी भंडारी जी ने बताया कि इस कानून की विधान परिषद के लिए भी लागू होने की आवश्यकता है । इतना ही नही, सभी राज्य सरकारो को यह बोलने की आवश्यकता है कि म्युनिसिपल स्तर या पंचायत स्तर के ऊपर जो प्रेसीडेशियल चुनाव होते हैं, अध्यक्ष के चुनाव होते हैं, वहां भी इसकी आवश्यकता है । ...**(व्यवधान)**... जेटली जी, मैं बता रहा हूँ कि वहां भी बड़ी भारी मात्रा मे पैसे का खेल होता है और जिसके पास पैसा है वही चुनाव जीत कर आ सकता है । प्रामाणिक कार्यकर्ता, पार्टी का कार्यकर्ता सक्रिय रूप से अपना वोट डाल कर वहां का चुनाव नही लड सकता । तो इसके लिए क्या इसी प्रावधान की आवश्यकता होगी या फिर दोबारा इस विषय पर सोच कर अलग से इसे दुरुस्त करने की आवश्यकता है?

उपसभाध्यक्ष महोदय, मैं दूसरी बात बताना चाहता हूं कि रेजीडेंस के बारे मे मंत्री जी जो बदलाव करने का सोच रहे हैं तो उस विषय पर मेरी उनको यह प्रार्थना है कि आप इस बारे मे दोबारा सोचिए । हम एनडीए के हैं और आप यह बिल लाए हैं तो हम इसका पूरा समर्थन करेगे, लेकिन इसमे जरा जो धोखा दिख रहा है वह मैं बताना चाहता हूं । वह धोखा ऐसा है कि कही से भी कोई आदमी प्रतिनिधि बन कर आ सकता है । अब ऐसा आदमी गोआ से प्रतिनिधित्व करके आएगा जिसको कि गोआ की कुछ भी जानकारी नही है, महाराष्ट्र का प्रतिनिधित्व ऐसा आदमी करके आएगा जिसको महाराष्ट्र की कुछ भी जानकारी नही है । अब चूंकि उसकी बड़ी पार्टी है, राष्ट्रीय स्तर की पार्टी है और उसकी पार्टी ने निर्णय लिया है कि उसी को चुन कर लाना है तो इस प्रावधान के बाद वह उसको उधर से ला सकेगी । सब से बड़ी आपत्ति यह है कि जिसको उस स्टेट के बारे मे कुछ मालूम नही ऐसे प्रतिनिधि यहां चुन कर आयेगे । यह जो हमारा हाउस है इसको हम कौंसिल ऑफ् स्टेट्स कहते हैं । इसका नामकरण ही कौंसिल ऑफ् स्टेट्स के नाम पर हुआ अर्थात् राज्यो के प्रतिनिधि यहां चुन कर आयेगे । इसलिए मेरा यह कहना है कि जो प्रतिनिधि है वह राज्य से संबंधित होना चाहिए और राज्य की उसको पूरी जानकारी होनी चाहिए, उस राज्य की उसको भाषा मालूम होनी चाहिए । वही प्रतिनिधि यहां आए और यहां आकर अपने राज्य का प्रतिनिधित्व करे । लेकिन ऐसा नही हो सकेगा । दिल्ली मे रहने वाला आदमी गोआ से चुन कर आएगा या कर्नाटक से चुन कर आएगा या फिर किसी और जगह से चुन कर आएगा । जब उसको वहां की कुछ मालूमात नही होगी तो वह उस राज्य और वहां के लोगो को न्याय नही दे सकेगा। यही ध्यान मे रखते हुए हमारे बुजुर्गो ने कानून मे इस ढंग का प्रावधान किया था ।

तीसरी एक और बात जो मेरी समझ मे आई है ...**(व्यवधान)**...

उपसभाध्यक्ष (श्री रमा शंकर कौशिक) : यह तो सब आप समझ कर ही बोल रहे हैं ।

श्री सतीश प्रधान : बस एक ही मुद्दा है और कुछ नही ।

उपसभाध्यक्ष (श्री रमा शंकर कौशिक) : नही, मैं उस पर नही कह रहा हूं, मैं तो यह कह रहा हूँ कि आप तो सारी बात समझ कर कह रहे हैं ।

श्री सतीश प्रधान : तीसरा मुद्दा मैं यह बताना चाहता हूं कि अभी-अभी हमारे ध्यान मे एक बात आई है । मैं महाराष्ट्र के थाना जिले से आता हूं । महोदय, मेरे ध्यान में एक बात आई है जिसे मैं आप के माध्यम से सदन के सामने रखना चाहता हूं । मंत्री जी, कृपया इस बारे में गौर करे और सोचे कि इस के लिए क्या प्रावधान की आवश्यकता है ? महोदय, यह बांग्लादेशी घुसपैठियो का मुद्दा है जो कि पूरे हिंदुस्तान मे जगह-जगह आकर बैठे हैं । यह बात सभी को ज्ञात है । वे विदाउट बर्थ सर्टिफिकेट आकर उर्दू स्कूलो मे एडमीशन ले रहे हैं । हमारे यहां ऐसे 800 बच्चो के केसेज पकड़े गए है ।

उपसभाध्यक्ष (श्री रमा शंकर कौशिक) : यह तो इस विषय से संबंधित नहीं है । ...**(व्यवधान)**...

श्री सतीश प्रधान : महोदय, मैं तो "द रिप्रजेंटेशन ऑफ द पीपुल बिल" के बारे मे बात कर रहा हूं । यह भी उसी से संबंधित है ।

उपसभाध्यक्ष (श्री रमा शंकर कौशिक) : आप समय का भी ख्याल रखिए ।

श्री सतीश प्रधान : अब आप मुझे इतना तो बोलने दीजिए । तो ये लोग इन स्कूलो में बर्थ सर्टिफिकेट न देकर एडमीशन ले लेते हैं और कुछ दिनों बाद स्कूल लीविंग सर्टिफिकेट लेकर स्कूल छोड़ देते हैं जो कि उन्हें स्कूल छोड़ते समय दे दिया जाता है । अब वह स्कूल लीविंग सर्टिफिकेट मिलने के बाद उन्हे यहां के नागरिक की सभी फेसिलिटीज उपलब्ध होती हैं । महोदय, यह एक बहुत बड़ा संकट आगे हमारे देश के सामने खड़ा होने वाला है और खड़ा हो रहा है । इसलिए मंत्री जी इस बारे मे गौर से सोचें कि इस संबंध मे क्या प्रावधान करना है, क्या व्यवस्था करनी है, यह खुलासा आप अपने जवाब मे देने का कष्ट करे । यही मेरी आप से विनती है । धन्यवाद ।

महोदय, मै इस विधेयक का समर्थन करता हूं ।

SHRI FALI S. NARIMAN (Nominated): Sir, I rise to oppose this Bill. This is not a matter for agreement of political parties. Political parties can't by agreement ride whether smoothly or roughshod over Constitutional and Statutory provisions. The Bill makes a virtue of alleged occasional false declaration of residence, and makes a necessity of occasional wrong doing or exercise of money power. Pranabji, with all of his experience has rightly said that we are making a major change in our electoral mechanism. I respectfully submit, it is a fundamental change.

Take residence, for example. How many Members are aware--and they must be made aware--that it is a Constitutional imperative in the context of elections to the House of People and the Legislative Assembly?

Permit me to read article 326 of the Constitution. It says, "The election to the House of People and to the Legislative Assembly of every State shall be on the basis of adult suffrage--that is to say that every person, who is a citizen, not less than 18, etc.,--and is not otherwise disqualified under this Constitution or law made by the appropriate legislature on the ground of non-residence, unsoundness of mind, crime, etc., shall be entitled to be registered as a voice at any such election." So, residence or non-residence is one of the essential features in our Constitution with regard to the House of People and the Legislative Assembly. I have great Constitutional misgivings about section 2. It does away with an essential federal feature of our Constitution. I invite the attention of hon. Members to article 80 of our Constitution, which expressly says, "The Council of States shall consist of not more than 238 representatives of the State." This is a Constitutional term of art, "Representatives of the State." And how are they representing? By having the closest possible connection with the State. And how is that close connection to be established? It has been established in all the countries; it is not only in our country: By requirement of residence. It is, now, said to be assumed that residence is *somehow* become very difficult to define; that it has created a lot of problems, etc. It has not created any problem. In the Civil Procedure Code, which the Law Minister has just recently amended, the basic jurisdiction of a civil court, throughout this country is based on residence of the defendant, and that is easily understood; everybody understands it; it is always understood. Now, why is it necessary to do away with residence? That is the only link that the Council of States has. Otherwise, we are only a different form of the Lok Sabha. We are not then a Council of States. We are altering the very nature of the Constitutional requirement of a Council of States because it says you will have to have seats allocated according to the Fourth Schedule with regard to representatives in the States. That is why the people look up to people in this House and say they represent, this person or that person represents the State. Therefore, Sir, I would respectfully submit that there is a grave Constitutional problem in enacting clause 2. I would respectfully submit to the hon. Law Minister, a very eminent lawyer that he is, to please reflect on it, and not just change it because somebody has recommended or political parties have agreed to. Political parties will come and go. Political parties are not agreeing even on a resolution on Iraq. What is the use of saying that they will agree to a particular thing.

AN HON. MEMBER: They have agreed.

SHRI FALI S. NARIMAN: If they have agreed, they have agreed after 48 hours. It took them 48 hours to agree. ...*(Interruptions)*... Therefore, I do not place much reliance on agreement of political parties. I respectfully submit that we cannot go by an agreement of political parties. This is a Constitutional imperative. If you alter - you are basically altering the position of the representatives of the States - it is a Constitutional term of art and that I would respectfully submit no one can do, except by altering the Constitution itself. There is nothing difficult about residence as I have already stated. We have it all the time. We have it in section 20 of the 1950 Act. Ordinarily resident has been defined...*(Interruptions)*... Yes, several clauses have been there. It says, merely because you own a house, that does not mean that you are a resident. But that does not mean because you own a house, you are not a resident. I, therefore, respectfully submit that this goes against set principles. With regard to money power exercised in elections to the Rajya Sabha, there is equally money power that determines many elections to State Assemblies and to the Parliament. The remedy does not lie in open-ballot. Are you going to have an open-ballot in parliamentary and Assembly elections because of the suspicion that votes are bought. I submit that clauses 3, 4 and 5 are against the basic principles of parliamentary democracy. I will only read, Sir, one part of an editorial that came in *The Statesman* which I entirely concur with. Sir, permit me to adopt it as my argument. It was published on 1st April. It says, "The problem can be tackled by the Election Commission at the time of the scrutinising nomination papers, making political parties accountable for sponsoring them. But to do away with the qualification for membership of the Council of States prescribed by the Representation of the People Act is on a par with the hypothesis that because murders continue to be committed despite section 300 of the Indian Penal Code, that section should be repealed. The remedy is to enforce law and the Constitution." I would say likewise, Sir. That is why I am totally opposed to this Bill.

SHRI N.K. PREMACHANDRAN (Kerala): Mr. Vice-Chairman, Sir, I thank you for giving me this opportunity. Sir, I also strongly oppose all the provisions of this Amendment Bill.

[THE VICE-CHAIRMAN (SHRI NILOTPAL BASU) in the Chair]

Sir, I am astonished to hear the arguments advanced by the hon. Law Minister and Mr. Kapil Sibal, who is a most respected Constitutional expert supporting or making arguments in favour of this Bill. ...(Interruptions)...

[THE DEPUTY CHAIRMAN in the Chair]

Madam, I would submit respectfully that I am fully supporting the arguments made by hon. Fali S. Nariman regarding the Constitutional spirit of these amendments. The first amendment that is sought to be made is regarding the residential qualification. My point is that this amendment which has been brought before this House is absolutely against the spirit of the Constitution. Why is it so? It is because that even the name of this House is the Council of States. Wherever any mention is being made about it, it is very specifically stated that it is the representative of the States. It is very specific. I am not entering into a legal argument. I am on the spirit of the Constitution. Madam, regarding the Fourth Schedule of the Constitution, I would like to cite example. I would like to cite an example. It was very specifically mentioned in the Fourth Schedule about the number of seats to be allocated to each particular State. For example, my State is having nine seats. Now, there is a big controversy going on about the Rajya Sabha elections. Haryana is having five seats. Suppose, two or three Members from Haryana are nominated by a particular national party to represent Kerala, the 'representatives' from Haryana will become eight and the real representatives from Kerala will come down to either five or six. I would like to know whether this is in line with the spirit of the Constitution. That is my specific question. The number of seats allocated to a particular State is on the basis of so many aspects. Suppose the clause relating to residential qualification is taken out from the Representation of the People Act, the spirit of the Constitution has gone. It is totally against the spirit of the Constitution. It is just for political adjustments for some political parties to get into the House. And, the hon. Law Minister, while commending this Bill to this House, has said that even the major national political parties are not able to make the representation in certain States. Yes. That is correct. In my State, the National Democratic Alliance has no representation because of the constitution of the Legislative Assembly there. Here, for example, the people of Kerala do not want a representative of a particular party in the Government. Why are you imposing another person to be a representative of that State? That is my question. So, his argument cannot be accepted in such a way. The Legislative Assemblies elect the Members of the Council of States. The people elect the Members of the Legislative Assembly. And, the people directly elect their representative. If that be the case for having a representative, that argument cannot be accepted. And, it is very clear that the qualification of a person to be elected to the Council

of States is that he should be a resident of that State which he wishes to represent. The Fourth Schedule as well as Article 82 of the Constitution very specifically says that he should be a representative of the State. The Statement of Objects and Reasons say, "The Chief Election Commissioner, while discussing this aspect in the all-party meeting held on 29th April, 2001, was of the view that a precise definition of 'ordinarily resident' was very difficult and emphasised that it was for the political parties, acting through Parliament, to carry out what is in their judgment, might be the best possible solution, in the light of the experience of the past fifty years." That is in respect of the term 'ordinarily resident.' It does not mean that qualification has to be changed. The term 'ordinarily resident' has to be explained. This is what the Chief Election Commissioner has stated. We have to categorically explain if a person residing for six months or one year or two years in a particular State constitutes 'ordinarily resident.' This is the job of Parliament. That does not mean that in order to avoid that difficulty, the term 'ordinarily resident' should be taken away and a person who is a resident of India can be a Member of the House. That is not the spirit of the Chief Election Commission's Report.

Secondly, in order to fight with money power and muscle power, you are permitting open ballot. It is against the principles of the Parliamentary democracy. The secrecy of ballot is there. Suppose, cross voting has taken place at some place. The hon. Law Minister has explained about his experience. We have got so much experience during the last two or three years. There is not only cross-voting, but the corporate houses or the persons, who are having influence and muscle power, have entered into the House unanimously! That means the political parties have taken them into consideration. How have they come? I would like to know whether you are able to combat corruption. Whether you are able to avoid corruption by merely avoiding the cross-voting system? And, the same things will happen in future as well. Regarding, unanimous acceptance, I would say, how is it possible? So, the political party has to be discipline? This is the defect of all the political parties, not the political system. So, correct your political parties. If a leadership -- MLA or nominee -- is given to a man, he should function in accordance with the discipline of the party. If you say that my party or my party colleagues or my party representatives are not accepting the mandate or the direction of the high command or the highest authorities, therefore, the secret ballot is gone, then, what is the meaning of democracy? Is the failure of the system or is it the failure of the political

parties? This has to be taken into consideration. So, this is just as Mr. Nilotpal Basu has already said, 'retail' becoming 'wholesale.' A political party can be purchased. What is the difficulty in it? So, my humble submission is that these two amendments have to be withdrawn. And more discussion has to take place. Otherwise, the spirit of the Constitution will not be there. The political probity of this system will disappear. So, I strongly oppose these two amendments. Thank you.

THE DEPUTY CHAIRMAN: But you admit that there is corruption. Then, how to stop the corruption? That is the main thing.

SHRI NILOTPAL BASU: Madam, even open voting system would not stop corruption.

SHRI N. JOTHI: Only disqualification will stop corruption.

SHRI SHANKAR ROY CHOWDHURY (West Bengal): Madam Deputy Chairperson, the fact that a Bill like the Representation of the People (Amendment) Bill, 2001 has been brought forward before this august Bill, is a very sad and disturbing commentary on the state of our political system. It is to be seen in the context of other unpalatable, unfortunate, uncomfortable issues, which are sought to be manipulated and brushed under the carpet by bringing such pieces of legislation. And, I think, this has to be seen in the context of the other Bill, which had been brought before the House, that a candidate for election must declare his criminal record and his assets, which was pronounced adversely by the Supreme Court. This is a part of the same series of Bills, which seek to put aside such uncomfortable assumptions from the political class. I think this particular Bill deals with two components -- one, the factor of residency, seeks to do away with it; second, to introduce the system of open ballot. These are somehow being discussed as two separate components. It is not so. They are interlinked. They are interlinked, Madam, through the common link of money power. Both are two facets of the same issue. Therefore, I think, this Bill, however it may be worded, new terminology, new jargon is coming up, is an attempt to manipulate the spirit of the Constitution by application of various perceptions of the spirit of the law. This House, as has been brought out by many eminent speakers before me, is the Council of States. It is the Council of States, composed of people who should be, and are intended to be, normally resident in that State.

Yes, there is talent in the country, which is required, as my friend, Shri Nilotpal Basu, has pointed out, for nation building. There has to be a place for such people also. There is, of course, a system where nominated Members are there. And, on certain exceptional occasions some adjustments can be made. But to do away with the whole system of 'ordinarily resident in the State', I think, is to strike at the very roots of a system, in which there is one House which is elected by the people, and other system, that is, this system, the Upper House, where the States representatives choose to elect people whom they feel will represent the interests of the States. I think, this is an attempt to eliminate this half of our entire legislation edifice. It is an attempt to find a way to overcome obstacles and to avoid uncomfortable issues. It calls for political consciousness and awareness on the part of political parties. And, I think, we have already spent more than 50 years, practicing a certain kind of legal system. This political consciousness, political awareness is certainly nowhere on the horizon of any political party. So, I think it is a very dangerous movement; a dangerous move to replace the original spirit of the Constitution, the system of checks and balances, the perception of national vision, which our founding-fathers had built into the Constitution for the sake of rationalising, what is hypocrisy, you may like to call it anything, hypocrisy of legalising illegality. I, therefore, oppose this Bill. I oppose the clause of 'residency' in this Bill, which seeks to remove the clause of 'residency' as a term of qualification for the membership to the Upper House, the Rajya Sabha. As far as the open-ballot is concerned, it is an interesting idea. If a closed ballot gives rise to corruption, to use of money, to use of undue influences, I think an open-ballot is a good system. Therefore, I support the system of open-ballot for these elections.

In conclusion, therefore, Madam, I would like to say that I oppose the clause which seeks to remove 'residency' as a term of qualification for the Rajya Sabha, but I do support the proposal to introduce an open-ballot for elections to the Rajya Sabha. Thank you.

SHRI CHO S. RAMASWAMY (Nominated): Madam Deputy Chairman, the amendments proposed talk of two breaches. One is the breach of law when people who are not ordinarily resident in a State somehow manage to obtain the residential qualification. There the Minister says that because there are so many breaches happening everyday, I am giving up the law. On the question of secrecy of voting, there is breach of

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party discipline. He says because there is breach of party discipline, I am plugging the loopholes in the law. So, he is adopting two different approaches; in one, he gives up the law, in another, he plugs the loopholes. But I am not able to agree with the opposition to amendment regarding residential qualification. The main point of opposition is that this will cease to become a Council of States, if people from other States come to represent another State. The Council of States, in my opinion means the Council elected by the representatives of the State Assemblies, not more than that. I don't think that this House should be represented only by the people from that State. The House of the People is elected by the people, and the House of Elders is represented by the State Assemblies' representatives. Mr. Nilotpal Basu spoke about a person having represented three different States at three different points of time. There is nothing wrong with that. ...*(Interruptions)*... Yes, representing different parties and also different States. I am talking about the States only, I am not bothered about parties because I am not representing any political party. Well, in the House of the People, I think we will find Members who represent different constituencies at different points of time. They might have represented four or five constituencies, likewise here, people represent different States.

THE DEPUTY CHAIRMAN: They also represent different parties.

SHRI CHO S. RAMASWAMY: When the people of one constituency are fed up with a man...*(Interruptions)*...

SHRI NILOTPAL BASU: He has no problem with that. ...*(Interruptions)*...

SHRI CHO S. RAMASWAMY: I have no problem with anything at all. I am not accountable at all. ...*(Interruptions)*...

THE DEPUTY CHAIRMAN: That is another problem.

SHRI CHO S. RAMASWAMY: When the people of a constituency are fed up with their candidate, they reject him, or, in anticipation of their rejection, he goes to a different constituency, likewise, when a candidate

knows that he is going to be rejected by the State, he goes to a different State, there is nothing wrong with it. Shri Fali S. Nariman spoke about the Constitution and said that we are going against it, because the Constitution speaks about the representatives of the State. Yes, the Constitution speaks about the representatives of the State in the sense that they are elected by the State Assemblies. He also spoke about the provision in the Constitution which says that a person will be liable if he violates the residential qualifications prescribed by the Parliament. In that sense, every law is made under the Constitution, because of the authority granted by the Constitution. Violation of any Act would become violation of the Constitution. Amendment of any Act would go against the Constitution. I think, we are in a fast changing society and we should not lose the services of eminent personalities who cannot come to this House unless this residential qualification is removed, once and for all. I also sympathise with the political parties. There is dissidence now in every Party. Nominating a person to Rajya Sabha is one of the ways of containing dissidence. If there are two big personalities in one State, to get rid of one, the easiest way is to send him to Rajya Sabha. Because of the lack of strength, one particular State may not be in a position to accommodate the two, so he comes from a different State. Let us not deny that privilege to the political parties, for better peace among political parties-- intra-party peace and inner party peace. Out of sympathy to the political class, I support that.

Coming to the secrecy of voting, I think, the hon. Minister is hitting more at newspapers than anything else. Because, now, on the eve of every Rajya Sabha elections, we go on conjecturing or speculating that there may be cross voting. This Party may get only 30 votes out of the 32, because 2 persons are thinking of voting to the other candidate. All this will be lost. There will be no speculation. Newspapers will have no thrill on the eve of the Rajya Sabha election, because everything will be known. The Parties are going to vote according to their strength. The Minister can as well say that seats will be allotted to the Parties on the basis of their strength. Only the Independents' votes will count. Otherwise, they are going to vote according to their strengths. Even here, I sympathise with the political class, because cross-voting has become a menace. It has been proved, again and again, that Party discipline is being violated. It is an indirect mockery of the anti-defection law. Protection is given to those who violate the whip because of the secret ballot. So, here again, sympathising with the political class, I support that also.

SHRI ARUN JAITLEY : Madam, I am extremely grateful to the hon. Members who have expressed their views at length. Broadly, three categories of views have been expressed. The first category is those who have supported both the limbs of the Amendment. There are some who have supported the second limb of the Amendment, and some even wanted the Tenth Schedule to be added as a deterrent against the menace of cross voting, particularly, which is motivated by corrupt practices. Some had reservations about the first limb and some have opposed both aspects of this amendment. As far as the first aspect is concerned, it is not being suggested that merely because, in some cases, a violation has taken place, therefore, let us legitimise this, once and for all. The Rajya Sabha, indeed, is a Council of States. It will always remain a Council of States, because it is the State Assemblies which elect the Members to the Rajya Sabha. The representatives mentioned in article 80 of the Constitution, which Mr. Nariman referred to, will always be representatives of that State, because it is the legislators of that State who have elected them. I don't see any conflict, as Mr. Nariman has pointed out, between any constitutional provision, because if we take article 80 and read it along with article 84 of the Constitution, the position becomes very clear. Madam, Article 84 deals with qualifications for membership of Parliament. It reads, "A person shall not be qualified to be chosen to fill a seat in Parliament unless he --

(a) is a citizen of India, and makes and subscribes before some persons authorised in that behalf by the Election Commission an oath or affirmation according to the form set out for the purpose in the Third Schedule -- we are not changing that;

(b) is, in the case of a seat in the Council of States, not less than thirty years of age and, in the case of a seat in the House of the people, not less than twenty-five years of age; -- we are not changing that; and

(c) possesses such other qualifications as may be prescribed in that behalf by or under any law made by Parliament.

The qualifications, therefore, under Article 84 are not prescribed by the Constitution. The qualifications are to be prescribed by law made by Parliament. It is this House along with the other House which has the complete sovereignty to make any law which lays down the conditions for

elections to either the House of People or the Council of States. Therefore, we did make a law which is the 1950 Act which deals with the registration of electors, and the 1951 Act which deals with the various other aspects of the elections. It is the 1951 Act which in Section 3 says, "A person shall not be qualified to be chosen as a representative of any State or the Union Territory in the Council of States, unless he is an elector of a parliamentary constituency in that State or Territory." Therefore, what we are seeking to change now is the qualification which is contained in Section 3 by a law made by Parliament. Therefore, to suggest that Parliament is completely denuded of its jurisdiction to change an eligibility condition would be an argument which runs completely counter to the mandate given to Parliament under Article 84. And, therefore, Madam, I express my inability to agree with the suggestion which Mr. Nariman had made in this regard. In fact, we have even consulted various political parties, various other agencies before these amendments were finalised. We even consulted the Election Commission. ...*(Interruptions)*...

SHRI KAPIL SIBAL: The Election Commission, in fact, in a meeting suggested this. ...(Interruptions)...

SHRI ARUN JAITLEY: The Election Commission not only suggested it ...*(Interruptions)*...

SHRI NILOTPAL BASU: Mr. Jaitley, could you yield for a minute?

SHRI ARUN JAITLEY: Okay.

SHRI NILOTPAL BASU: In fact, Madam, I was going to put this question. There is a very specific recommendation in the report of the Standing Committee also in this regard that before piloting this Bill, the Government will explore possibilities to evolve some kind of a consensus. So far as we are given to understand, at least, our party has not been consulted. This is the first thing. And, the second thing is, the reference to the Election Commission is also very, very unfortunate. Why I am saying this is because I happened to have represented my party in that meeting of the Election Commission, and it was not a part of the agenda on that particular day. A passing question was made, and then, naturally, people were not prepared, and all kinds of weird answers were there. In a serious legislative process, if the Government is referring to such cursory references, it is very unfortunate.

SHRI ARUN JAITLEY: Madam, I will not make any cursory reference to what the Election Commission may or may not have said at the meeting which Mr. Sibal referred to. ...*(Interruptions)*...

THE DEPUTY CHAIRMAN: Please, let him answer.

SHRI ARUN JAITLEY: In fact, we did consult the Election Commission. The Election Commission had somewhat different views on the second question of open voting. But, on this question, I will just read what the Election Commission informed the Government. It is said, "I am to refer to your letter dated so and so on the subject above and state that the full Commission after due deliberation is of the view that the proposal to do away with the requirement of residence of a particular State for contesting election to a Council of States from that State is in order, and has the support of the Commission." Therefore, it is not a cursory reference which may or may not have been made in the meeting. A specific query was made to that. The Election Commission also did respond to this. When I was referring in the opening comments while commending this Bill for acceptance, it is not merely the fact that if the breach has taken place in 10 per cent or 20 per cent of the cases, it is ultimately the Council of the States which will retain its character as the Council of the States. The political parties will decide, and, in most cases, as Mr. Sibal pointed out, as Shri Pranab Mukherjee pointed out, people will be residents of that State, the parties have to ultimately be accountable to the people. There may be several cases where parties may actually think in terms of an exception.

I quoted one exceptional circumstance where a Government at the Centre may legitimately feel the need of having representatives of every State as a part of that Government so that the voice of that State in the Council of Ministers can be stated. After all, there are issues of development, which are concerned. You may actually not have representative in either House of Parliament from that particular State, and therefore, you may feel the need to have a Member of that particular State or resident of that State elected from another State to make a rather composite representation in the Council of Ministers. Can we forget the 1977 situation where the then Janata Party swept the election in north India and had only one Lok Sabha Member in the four southern States? Going by this suggestion which is being made by some Members, when the State Assemblies in the southern States had a predominant majority of parties

other than the then combination which was in power, four States of the south might have almost gone un-represented if a resident of that State had not been got elected to the Rajya Sabha from other States. Therefore, having a larger flexibility of this kind will be both in the interest of federalism as also in the interest of composite representation. In exceptional situations, whether it is man of merit or whether it is to give representations to particular States in the Council of Ministers, this experiment has proved to be somewhat successful. As was suggested by some of the Members, we are starting a new experiment. It is an important change that we are making. Therefore, it is a change, which I would commend to this House for its consideration.

As far as the second limb of the amendment is concerned, I wish to say this. It is not merely by agreement of political parties. It is extremely fashionable today even in the world outside this House to somewhat consider that political parties or political individuals do everything for their personal interest, or some interest of their parties, or with motives. After all, we represent a predominant section of the society. Therefore, when main political parties discuss issues, they give their stand to which they may agree or they may disagree, they do it in what they feel the national interest is. Therefore, in these cases, the interest is when you say that there is an agreement of political parties, there is no such agreement. There are many parties who are very close friends of ours, who express reservations here or there about certain provisions, it is not that they have a motive; they have a genuine concern when they have expressed reservations. There is a legitimate concern amongst political parties. It is not a question of indiscipline in a political party. A question of indiscipline within a political party may arise when there are two views in a party and some people decide that some other candidates should be put up. It is a case where we are finding that a trend has started where when large amounts are being offered to legislators in the States and amounts are so observably large, secrecy is going to conceal that corruption. Merely because your vote would not be known, you can quietly take large amounts of money as some of the Members pointed out, take it in some cases -- I think, Shri Bhandari pointed it out -- from more than one person and then quietly go and vote against the political party. Therefore, what is sought to be checked is not the very discipline of a political party, but this tendency, which has just about started. We had some experiments. Some Members from Maharashtra did give specific illustrations in this regard. Therefore, we have

started this experiment. We have started and seen this experiment that money is playing a very important role. Therefore, one of the purposes of legislation is that it must have nexus to the evil sought to be curbed, and the evil sought to be curbed in this case is not somehow to control party disciplines. The evil sought to be curbed is that we, Members of the Legislative Assembly who vote, are falling prey to these temptations. This trend has started. It is growing. Therefore, this House using its legislative jurisdiction must step in and curtail that particular menace that is building up. This is the objective with which this particular amendment has been brought about. Madam, with these words, I commend to this House this amendment for acceptance.

There is one last point, which Shri Bhandariji mentioned. In fact, not only Shri Lalu Prasad has mentioned this outside and earlier also, even Shri Mulayam Singh Yadav has written a letter that it is time to consider if what is being done in the context of the Rajya Sabha election should also be extended to the Legislative Councils. We are examining this matter. We will keep this issue open. One of the difficulties in relation to the Legislative Council is that representation to the Legislative Council comes from various segments. You have the Graduates constituencies, you have some other segments, local bodies which are represented; you also have the State Assemblies which elect people. Therefore, to make a regulation only with one category of electors and not the other category of electors, may create some complications. But if, in future, a situation does arise that this menace that we are seeing in the Rajya Sabha gets extended to the legislative councils, and perhaps to one of the constituents, that is, the State Assemblies, this House would always have the jurisdiction to consider the proposal at an appropriate stage. With these words, Madam, I recommend to this House that this Bill be accepted.

SHRI KAPIL SIBAL : What about the open ballot system?

SHRI ARUN JAITLEY : I am sorry. I am grateful to Shri Kapil Sibal for having reminded me. It is, indeed, going to be a very crucial question to decide as to how the open ballot would actually be conducted. We have, through the legislation, accepted this principle of openness of the ballot. I do accept what Shri Sibal says, that it would be most appropriate that the openness would be *qua* his party, because he is a representative of the party, who has been elected to the House, the Legislative Assembly and he

is casting his vote as a member of that particular party. He has made one particular suggestion; I had indicated another. But I may assure this House, as I had done that in my opening remarks, that we are absolutely open about it. Before rules are framed in this regard, we will invite suggestions of all political parties and consult the Election Commission. This is not a matter, which deals with one particular party or one State; we may even have to consult the State Chief Ministers and others who wish to express their views on this, and we will hold a larger consultation to determine the procedure in which the openness is to be exercised. That openness would be determined by the regulations, which are framed under this Act.

THE DEPUTY CHAIRMAN : Now, the question is :

"That the Representation of the People (Amendment) Bill, 2001, be taken into consideration."

The motion was adopted.

THE DEPUTY CHAIRMAN : We shall now take up Clause-by-Clause consideration of the Bill.

Clauses 2 to 5 were added to the Bill.

Clause 1 - Short Title

THE DEPUTY CHAIRMAN : There is one amendment by Shri Arun Jaitley.

SHRI ARUN JAITLEY : Madam, I beg to move :

"That at page 1, line 3, *for* the figure "2001" the figure "2003" be *substituted*."

The question was put and the motion was adopted.

Clause 1, as amended, was added to the Bill.

Enacting Formula

THE DEPUTY CHAIRMAN : There is one amendment by Shri Arun Jaitley.

SHRI ARUN JAITLEY : Madam, I beg to move :

"That at page 1, line 1, *for* the word "Fifty-second" the word "Fifty-fourth" be *substituted*."

The question was put and the motion was adopted.

The Enacting Formula, as amended, was added to the Bill.

"The Title was added to the Bill."

SHRI ARUN JAITLEY : Madam, I beg to move :

"That the Bill, as amended, be passed."

The question was put and the motion was adopted.

THE DEPUTY CHAIRMAN : Thank you very much for doing such a good business today. The House is adjourned till eleven o'clock tomorrow.

The House then adjourned at twenty minutes past five of the clock till eleven of the clock on Wednesday, the 9th April, 2003.

MGIPMRND—1137RS—07.01.2004.